HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.840 of 2006

Between:

The Vice Chairman and Housing Commissioner,
AP Housing Board, Kukatpally, Hyderabad and another

… Appellants

And

Smt. M. Jayasree

… Respondent

::JUDGMENT::

Counsel for the appellants : Shri J. Prabhakar

Counsel for the respondent : Shri M. Venkata Ramana Reddy

January 05, 2007

Per G.S. Singhvi, CJ

This appeal is directed against order dated 05-04-2005 passed by the learned Single Judge in WPMP No. 192 of 2005 in Writ Petition No. 578 of 2002, whereby he quashed the demand raised by Executive Engineer (Housing), Western Division, Andhra Pradesh Housing Board, Kukatpally, Hyderabad (appellant No.2 herein).

For deciding the issue raised in the appeal, we may briefly notice the facts.

In response to notification dated 30.03.1993 issued by the Andhra Pradesh Housing Board (for short 'the Board'), respondent –

M. Jayasree Reddy applied for allotment of a developed plot in Phase XV, Kukatpally. As per the conditions specified in the notification, she deposited Rs.90,000/- sometime in 1995. After five years, the respondent was served with notices dated 20.09.2001 and 10.10.2001, whereby she was called upon to pay an amount of Rs.1,13,000/- towards balance of the revised tentative cost. The respondent challenged the same in Writ Petition No.578 of 2002. By an order dated 23.08.2004, the learned Single Judge dismissed the writ petition. Last two paragraphs of that order read as under:

> "On considering the submissions and also on perusal of the impugned proceedings, it is seen that the petitioner was allotted a plot long back and that the entire consideration has been paid, as demanded at that relevant point of time. However, the fact remains that the market value of the plot was enhanced in view of the reference proceedings under Section 18 of the Land Acquisition Act, for which, the liability cannot be fastened upon the respondents. The petitioner along with similar such allottees in the very same land had to make good towards the said balance amount towards enhanced market value.
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> In view of the same, I do not find any merit in the complaint of the petitioner and I do not find any grounds to interfere with the impugned proceedings. The writ petition is accordingly dismissed. However, the petitioner is permitted to pay the entire balance amount within a period of three months from today."

After about six weeks, appellant No.2 issued letter No.84/HIG/E8/WD/03 dated 11.10.2004 to the respondent requiring her to pay Rs.54,692/- towards interest at the rate of 16.5% on the tentative cost of Rs.1,13,000/- for the period from 01.11.2001 to 06.10.2004. The respondent challenged the levy of interest in

WPMP.No.192 of 2005 in Writ Petition No.578 of 2002, which, as mentioned above, had been dismissed by the learned Single Judge. In the affidavit filed by her, the respondent relied on stay order dated 12.06.2002 passed by the learned Single Judge and pleaded that interest cannot be charged for the period during which the demand of the balance of tentative cost remained stayed by the High Court. She averred that the entire amount representing tentative cost had been paid and, therefore, there was no justification to burden her with huge amount of interest.

The learned Single Judge allowed the miscellaneous petition and quashed the demand of interest by observing that the non-petitioners have failed to explain the rationale of demanding interest despite the fact that the amount of tentative cost had been deposited.

We have heard Shri J. Prabhakar, learned counsel for the appellants and Shri M. Venkata Ramana Reddy, learned counsel for the respondent. In our opinion, the order under challenge suffers from jurisdictional infirmity and is liable to be set aside. The power of the High Court to issue directions or orders or writs in the nature of mandamus, certiorari, prohibition, quo-warranto and habeas corpus is not akin to the power of the British courts to issue five prerogative writs. In **Dwaraka Nath v. I.T. Officer**[1]**,** a three-judges Bench of the Supreme Court considered the scope and amplitude of the High Court's power to issue direction, orders or writs including the five prerogative writs and observed:

> "Article 226 is couched in comprehensive phraseology and it ex facie confers a wide power on the High Court to reach injustice wherever it is found. A wide language in describing the nature of the power, the purposes for which and the person or authority against whom it can be exercised was designedly used

> by the Constitution. The High Court can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression "nature" which expression does not equate the writs that can be issued in Indian with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. The High Courts are enabled to mould the reliefs to meet the peculiar and complicated requirements of this country. To equate the scope of the power of the High Court under Art.226 with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government to a vast country like India functioning under a federal structure. Such a construction would defeat the purpose of the article itself. But this does not mean that the High Courts can function arbitrarily under this article. There are some limitations implicit in the article and others may be evolved to direct the article through defined channels."

Article 226 does not, in terms, lay down that the High Court can review an order made in exercise of its power to issue directions, orders or writs including the five prerogative writs and by virtue of explanation appearing below Section 141 of the Code of Civil Procedure, the provisions contained in the Code do not, in terms apply to the proceedings under Article 226 of the Constitution of India. However, being a Court of record (Article 215), the High Court has inherent power to review an order made in exercise of the power under Article 226 of the Constitution of India. This was unequivocally recognized by the Supreme Court in **A.T. Sharma v. A.P. Sharma**[2]. While doing so, the Supreme Court cautioned against the use of the power of review for adjudicating the matter afresh by

presuming that the earlier order was erroneous. Some of the observations made in that decision are extracted below:

> "It is true there is nothing in Art.226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all manner of errors committed by the Subordinate Court."

Having noticed the relevant principles, we may now advert to the case in hand. In the writ petition filed by her, the respondent had questioned the demand of the balance tentative cost. The learned Single Judge did not find any merit in the respondent's challenge and dismissed the writ petition. Till that stage, appellant No.2 had not demanded interest on the amount of tentative cost. Therefore, the respondent did not have the occasion to challenge the same in the writ petition and the learned Single Judge was not called upon to adjudicate on the legality of the demand of interest. This being the position, the miscellaneous petition filed by the respondent under

Section 151 of the Code of Civil Procedure for quashing the demand of interest was clearly not maintainable and the learned Single Judge committed a jurisdictional error by entertaining and deciding the same. In our considered view, the prayer made by the respondent for quashing the demand of interest was clearly beyond the scope of the main petition and, therefore, the learned Single Judge was not entitled to entertain the same in the form of a miscellaneous petition.

The Court's anxiety to do justice between the parties can never be underestimated, but in that process, the Court cannot overlook the basic parameters for exercise of power under the Constitution or other laws and an order cannot be passed ignoring the settled principles of law laid down and/or approved by the Supreme Court and the limitations imposed by the Constitution and the statute. What the learned Single Judge has done by the impugned order is to adjudicate WPMP.No.192 of 2005 filed by the respondent as if it was a fresh petition filed against proceedings dated 11-10-2004. This was clearly impermissible.

In the result, the appeal is allowed and the order of the learned Single Judge is set aside. Consequently, W.P.M.P.No.192 of 2005 filed by the respondent in Writ Petition No.578 of 2002 shall stand dismissed. However, it is made clear that the respondent shall be free to avail appropriate legal remedy against proceedings dated 11.10.2004 issued by appellant No.2.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

January 05, 2007

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[1] AIR 1966 SC 81

[2] AIR 1979 SC 1047